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PART II—Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 16th December, 1977:—

BILL No 147 OF 1977

A Bill to consolidate and amend the law relating to the allowance of interest in certain cases.

Be it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Interest Act, 1977.

Short title,
extent and
commence-
ment

(2) It extends to the whole of India except the State of Jammu and
5 Kashmir.

(3) It shall come into force on such date as the Central Government
may, by notification in the Official Gazette, appoint.

2 In this Act, unless the context otherwise requires,—

Definitions.

(a) "court" includes a tribunal and an arbitrator;

10 (b) "current rate of interest" means the highest of the maximum
rates at which interest may be paid on different classes of deposits
(other than those maintained in savings account or those maintained
by charitable or religious institutions) by different classes of sche-
duled banks in accordance with the directions given or issued to
15 banking companies generally by the Reserve Bank of India under the
Banking Regulation Act, 1949.

10 of 1949.

Explanation—In this clause, “scheduled bank” means a bank, not being a co-operative bank, transacting any business authorised by the Banking Regulation Act, 1949,

10 of 1949.

(c) “debt” means any liability for an ascertained sum of money and includes a debt payable in kind, but does not include a judgment debt;

(d) “personal injuries” includes any disease and any impairment of a person’s physical or mental condition;

(e) all other words and expressions used herein but not defined and defined in the Reserve Bank of India Act, 1934, shall have the meanings respectively assigned to them in that Act.

Power of
court to
allow
interest

3. (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,—

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings;

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

(2) Where, in any such proceedings as are mentioned in sub-section (1),—

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person, or in respect of a person’s death,

then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages.

(3) Nothing in this section,—

(a) shall apply in relation to—

(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement; or

(u) any debt or damages upon which payment of interest is barred, by virtue of an express agreement;

(b) shall affect—

26 of 1881 5 (i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable Instruments Act, 1881; or

5 of 1908. (ii) the provisions of rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908;

(c) shall empower the court to award interest upon interest.

10 4. (1) Notwithstanding anything contained in section 3, interest shall be payable in all cases in which it is payable by virtue of any enactment or other rule of law or usage having the force of law. Interest payable under certain enactments

(2) Notwithstanding as aforesaid, and without prejudice to the generality of the provisions of sub-section (1), the court shall, in each of the following cases, allow interest from the date specified below to the date of institution of the proceedings at such rate as the court may consider reasonable, unless the court is satisfied that there are special reasons why interest should not be allowed, namely:—

20 (a) where money or other property has been deposited as security for the performance of an obligation imposed by law or contract, from the date of the deposit;

(b) where the obligation to pay money or restore any property arises by virtue of a fiduciary relationship, from the date of the cause of action;

25 (c) where money or other property is obtained or retained by fraud, from the date of the cause of action;

(d) where the claim is for dower or maintenance, from the date of the cause of action.

5 of 1908. 30 5. Nothing in this Act shall affect the provisions of section 34 of the Code of Civil Procedure, 1908. Section 34 of the Code of Civil Procedure 1908 to apply.

32 of 1839. 6. (1) As from the commencement of this Act, the Interest Act, 1839 and any other law corresponding thereto in force in any State immediately before such commencement shall stand repealed. Repeal and saving.

35 (2) The provisions of this Act shall not apply to any suit or other legal proceeding pending at the commencement of this Act and the provisions of the corresponding law applicable immediately before such commencement shall, notwithstanding the repeal of such law by sub-section (1), continue to apply to such suit or other legal proceeding.

10 of 1897 40 (3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeal.

STATEMENT OF OBJECTS AND REASONS

The Law Commission of India in its sixty-third Report had recommended the revision of the existing Interest Act, 1839. This Act is a very short one; besides a preamble, it contains only one section and a proviso. However, it is a statute of importance, since it prescribes the general law of interest which becomes applicable in the absence of any contractual or statutory provisions specifically dealing with the subject. According to the Commission, almost every phrase used in the Act has given rise to problems of interpretation and judicial decisions have disclosed divergence of views in respect of the same. The Commission has revised the Act comprehensively so as to make its provisions more precise, specific, unambiguous and juristically satisfactory. It is proposed to replace the existing Act by a new Act based on the recommendations of the Law Commission. The Bill seeks to achieve this object.

NEW DELHI;
The 7th December, 1977.

H. M. PATEL.

FINANCIAL MEMORANDUM

Clause 3 of the Bill empowers a court to allow interest on any debt or damages already paid, or to include interest on damages where the sum exceeds four thousand rupees, or to allow interest in respect of certain other cases.

Clause 4 of the Bill empowers a court to allow interest from the date of institution of proceedings up to certain specified dates in the case of money or other properties deposited as security, or restored by virtue of a fiduciary relationship, or obtained or retained by fraud.

It is not possible to envisage the situations in which expenditure would have to be incurred from the Consolidated Fund of India. Hence no estimate of such expenditure can be given at this stage.

BULL No. 148 OF 1977

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows:—

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|--|---------------------------|
| 1. This Act may be called the Constitution (Forty-fourth Amendment) Act, 1977. | Short title. |
| 2. Article 31D of the Constitution shall be omitted. | Omission of article 31D. |
| 3. (1) Article 32A of the Constitution shall be omitted. | Omission of article 32A. |
| 10 (2) Any proceedings pending before the Supreme Court under article 32 of the Constitution immediately before the commencement of this Act may be dealt with by the Supreme Court as if the said article 32A had been omitted with effect on and from the 1st day of February, 1977. | |
| 4. (1) Article 131A of the Constitution shall be omitted. | Omission of article 131A. |
| 15 (2) Notwithstanding anything contained in sub-section (1), where immediately before the commencement of this Act any reference made by a High Court under the said article 131A is pending before the Supreme Court, the Supreme Court may, having regard to— | |
| (a) the stage at which the reference is so pending; and | |

(b) the ends of justice,

either deal with the case as if that article had not been omitted or return the case to the High Court for disposal as if that article had been omitted with effect on and from the 1st day of February, 1977

Omission
of article
144A.

5. (1) Article 144A of the Constitution shall be omitted.

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(2) Any case pending before the Supreme Court immediately before the commencement of this Act may be dealt with by the Supreme Court as if the said article 144A had been omitted with effect on and from the 1st day of February, 1977.

Amend-
ment of
article 145.

6. In article 145 of the Constitution,—

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(a) in clause (1), in sub-clause (cc), for the words, figures and letters "articles 131A and 139A", the word, figures and letter "article 139A" shall be substituted;

(b) in clause (2), the words, figures and letter "article 144A and of" shall be omitted;

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(c) in clause (3), the words, figures and letter "Subject to the provisions of article 144A," shall be omitted.

Omission
of article
226A.

7 (1) Article 226A of the Constitution shall be omitted

(2) Any proceedings pending before a High Court under article 226 of the Constitution immediately before the commencement of this Act may be dealt with by the High Court as if the said article 226A had been omitted with effect on and from the 1st day of February, 1977.

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Amend-
ment of
article
228.

8. In article 228 of the Constitution, in the opening portion, the words, figures and letter ", subject to the provisions of article 131A," shall be omitted.

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Omission
of article
228A.

9. (1) Article 228A of the Constitution shall be omitted.

(2) Any case pending before a High Court immediately before the commencement of this Act may be dealt with by the High Court as if the said article 228A had been omitted with effect on and from the 1st day of February, 1977

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Amend-
ment of
article
366.

10. In article 366 of the Constitution, clause (4A) and clause (26A) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Constitution (Forty-second Amendment) Act, 1976, inserted various articles in the Constitution to curtail, both directly and indirectly, the jurisdiction of the Supreme Court and the High Courts to review the constitutionality of laws. Article 32A barred the Supreme Court from considering the constitutional validity of any State law in proceedings for the enforcement of fundamental rights unless the constitutional validity of any Central law was also in issue in such proceedings. Article 131A gave to the Supreme Court exclusive jurisdiction to decide the constitutional validity of a Central law and thus deprived the High Courts of their jurisdiction in respect of the same. Article 144A provided that the minimum number of Judges of the Supreme Court who shall sit for the purpose of determining the constitutional validity of any Central law or State law shall be seven and required a special majority of two-thirds for the invalidation of such law. Article 226A barred the High Courts from deciding the validity of any Central law and article 228A required that there should be a Bench of at least five Judges for determining the constitutional validity of any State law and prescribed a special majority for a judgment invalidating such a law.

2. It is considered that articles 32A, 131A and 228A cause hardship to persons living in distant parts in India. Further, article 32A would lead to multiplicity of proceedings as cases relating to the validity of a State law which could be disposed of by the Supreme Court itself have to be heard first by the High Court. The minimum number of Judges in every case wherein the constitutional validity of a law is involved, however unsubstantial the challenge might be, results in valuable judicial time being lost in hearing and rejecting submissions that have no substance. The Supreme Court has, in *M/s. Misrlal Jain vs. the State of Orissa and Others* (AIR 1977 SC 1686) expressed the hope that article 144A would engage the prompt attention of Parliament and would be amended so as to leave to the court itself the duty to decide how large a Bench should decide any particular case. In fact, a number of cases have been held up in the Supreme Court and High Courts as a result of the aforementioned articles.

3 It is, therefore, proposed to omit articles 32A, 131A, 144A, 226A and 228A. It is also proposed to make special provisions to enable the Supreme Court and the High Courts to deal with pending cases in the same manner as if the said articles had been omitted with effect from the 1st February, 1977 (*viz.*, the date on which those articles were brought into force). Necessary consequential amendments to articles 145, 228 and 366 are also proposed to be made.

4. Article 31D confers special power on Parliament to enact certain laws in respect of anti-national activities. It is considered that these powers of Parliament to make laws for dealing with anti-national activities and anti-national associations are of a sweeping nature and are capable of abuse. It is, therefore, proposed to omit article 31D.

5. The Bill seeks to achieve the above objects.

NEW DELHI;

SHANTI BHUSHAN.

The 12th December, 1977.

AVTAR SINGH RIKHY,
Secretary.